

ASSEMBLY BILL

No. 469

Introduced by Assembly Member Swanson

February 15, 2011

An act to amend Section 1197.1 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 469, as introduced, Swanson. Wages: civil penalties.

Existing law requires that employees be paid no less than the minimum wage set by the Industrial Welfare Commission, and declares that the payment of a less wage than the minimum so fixed is unlawful. Existing law provides that any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission is subject to a specified civil penalty.

This bill would make nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1197.1 of the Labor Code is amended to
- 2 read:
- 3 1197.1. (a) Any employer or other person acting either
- 4 individually or as an officer, agent, or employee of another person,
- 5 who pays or causes to be paid to any employee a wage less than

1 the minimum fixed by an order of the commission shall be subject
2 to a civil penalty as follows:

3 (1) For any initial violation that is intentionally committed, one
4 hundred dollars (\$100) for each underpaid employee for each pay
5 period for which the employee is underpaid.

6 (2) For each subsequent violation for the same specific offense,
7 two hundred fifty dollars (\$250) for each underpaid employee for
8 each pay period for which the employee is underpaid regardless
9 of whether the initial violation is intentionally committed.

10 (b) If, upon inspection or investigation, the Labor Commissioner
11 determines that a person has paid or caused to be paid a wage less
12 than the minimum, the Labor Commissioner may issue a citation
13 to the person in violation. The citation may be served personally
14 or by registered mail in accordance with subdivision (c) of Section
15 11505 of the Government Code. ~~Each~~ *The Labor Commissioner*
16 *shall issue each* citation ~~shall be~~ in writing and shall describe the
17 nature of the violation, including reference to the statutory
18 provision alleged to have been violated. The Labor Commissioner
19 promptly shall take all appropriate action, in accordance with this
20 section, to enforce the citation and to recover the civil penalty
21 assessed in connection with the citation.

22 (c) (1) If a person desires to contest a citation or the proposed
23 assessment of a civil penalty therefor, the person shall, within 15
24 business days after service of the citation, notify the office of the
25 Labor Commissioner that appears on the citation of his or her
26 request for an informal hearing. The Labor Commissioner or his
27 or her deputy or agent shall, within 30 days, hold a hearing at the
28 conclusion of which the citation or proposed assessment of a civil
29 penalty shall be affirmed, modified, or dismissed.

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31 (2) *The* decision of the Labor Commissioner shall consist of a
32 notice of findings, findings, and an order, all of which shall be
33 served on all parties to the hearing within 15 days after the hearing
34 by regular first-class mail at the last known address of the party
35 on file with the Labor Commissioner. Service shall be completed
36 pursuant to Section 1013 of the Code of Civil Procedure. Any
37 amount found due by the Labor Commissioner as a result of a
38 hearing ~~shall become~~ *is* due and payable 45 days after notice of
39 the findings and written findings and order have been mailed to
40 the party assessed. A writ of mandate may be taken from this

1 finding to the appropriate superior court. The party shall pay any
2 judgment and costs ultimately rendered by the court against the
3 party for the assessment. The writ shall be taken within 45 days
4 of service of the notice of findings, findings, and order thereon.

5 (d) A person to whom a citation has been issued shall, in lieu
6 of contesting a citation pursuant to this section, transmit to the
7 office of the Labor Commissioner designated on the citation the
8 amount specified for the violation within 15 business days after
9 issuance of the citation.

10 (e) When no petition objecting to a citation or the proposed
11 assessment of a civil penalty is filed, a certified copy of the citation
12 or proposed civil penalty may be filed by the Labor Commissioner
13 in the office of the clerk of the superior court in any county in
14 which the person assessed has or had a place of business. The
15 clerk, immediately upon the filing, shall enter judgment for the
16 state against the person assessed in the amount shown on the
17 citation or proposed assessment of a civil penalty.

18 (f) When findings and the order thereon are made affirming or
19 modifying a citation or proposed assessment of a civil penalty after
20 hearing, a certified copy of these findings and the order entered
21 thereon may be entered by the Labor Commissioner in the office
22 of the clerk of the superior court in any county in which the person
23 assessed has property or in which the person assessed has or had
24 a place of business. The clerk, immediately upon the filing, shall
25 enter judgment for the state against the person assessed in the
26 amount shown on the certified order.

27 (g) A judgment entered pursuant to this section shall bear the
28 same rate of interest and shall have the same effect as other
29 judgments and be given the same preference allowed by the law
30 on other judgments rendered for claims for taxes. The clerk shall
31 make no charge for the service provided by this section to be
32 performed by him or her.

33 (h) The civil penalties provided for in this section are in addition
34 to any other penalty provided by law.

35 (i) This section shall not apply to any order of the commission
36 relating to household occupations.